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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 DANIEL ROY SMITH,

No. 2:22-CV-1637-WBS-DMC-P

12  
13 Plaintiff,

14 v.

ORDER

15  
16 OSMON, et al.,

17 Defendants.  
18  
19

20 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
21 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,  
22 ECF No. 12.

23 The United States Supreme Court has ruled that district courts lack authority to  
24 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.  
25 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the  
26 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935  
27 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
28 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success

1 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the  
2 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is  
3 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the  
4 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
5 of counsel because:

6 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
7 articulate his claim. The facts he alleged and the issues he raised were not  
8 of substantial complexity. The compelling evidence against Terrell made it  
extremely unlikely that he would succeed on the merits.

9 Id. at 1017.

10 In the present case, the Court does not at this time find the required exceptional  
11 circumstances. Plaintiff alleges that he is legally blind and unable to read because of this  
12 condition. ECF No.12, pg 1. However, Plaintiff appears to have written this Motion to Appoint  
13 Counsel without the use of assistance and Plaintiff has not alleged facts sufficient to show that he  
14 is not able to prepare and represent himself in this case. Id. Based on Plaintiff's past filings it is  
15 clear he is capable of articulating his claims. Finally, at this stage in the case the Court cannot  
16 determine that Plaintiff has established a particular likelihood of success on the merits.

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the  
18 appointment of counsel, ECF No. 12, is denied.

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20 Dated: February 6, 2023



21 DENNIS M. COTA  
22 UNITED STATES MAGISTRATE JUDGE  
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